

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Petitioner,

v.

No. CV 10-0190 JC/CG  
CR 07-2052 JC

MICHAEL ANTHONY MCGAUGHEY,

Defendant.

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**THIS MATTER** is before the Court on Petitioner Michael McGaughy's *Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* ('Petition') (Doc. 1),<sup>1</sup> Respondent's *Response to Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody* ('Response') (Doc. 4), and the *Judgment in a Criminal Case* entered by the Honorable United States District Judge John E. Conway (CR 07-02052 JC, Doc. 150). Petitioner sought to have his original criminal sentence vacated on the theory that his attorney's failure to file a sentencing memorandum or request a downward variance from the guidelines constituted ineffective assistance of counsel. (Doc. 1 at 3-4). The United States' Attorney ultimately acceded to Petitioner's requests; his original sentence was vacated and Judge Conway thereafter conducted a second sentencing hearing. Mr. McGaughy's counsel was afforded an opportunity to request a downward variance from the guidelines

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<sup>1</sup> The status of Petitioner's case is reflected in two separate dockets - CR 07-02052 JC - which covers Mr. McGaughy's criminal proceedings, and CV 10-0190 JC/CG, which covers Mr. McGaughy's civil § 2255 habeas proceedings. Unless specifically noted, all further references to docket numbers will correspond with the docket entries for CV 10-0190 JC/CG.

at the second sentencing hearing. (CR 07-02052 JC, Doc. 152 at 2-8). Because Mr. McGaughy has now received the relief requested in his Petition, **IT IS HEREBY RECOMMENDED THAT** Mr. McGaughy's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody be **DISMISSED WITHOUT PREJUDICE.**

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE** of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.**



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UNITED STATES MAGISTRATE JUDGE